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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,267	06/23/2003	Fredrick Phillip Kollar	Kollar - Tunaman	7163
7590 07/12/2005				
Fredrick Phillip Kollar 38 Oxbow Creek Lane Laguna Hills, CA 92653				
			EXAMINER BARNEY, SETH E	
			ART UNIT 3752	PAPER NUMBER

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/603,267	Applicant(s) KOLLAR, FREDRICK PHILLIP	
	Examiner Seth Barney	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/23/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "24" has been used to designate both the orienting shelf and the bottom end in Figure 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because Figure 5 is an exploded view and should be bracketed. Figure 6 shows different individual parts and is not an exploded view. Each part of Figure 6 should have its own Figure number and should not be bracketed. The specification should be amended to reflect this change. Figure 7 is an exploded view and should be bracketed. Figure 9 is not an exploded view and should not be bracketed. It is unclear as to why there are three copies of the same Figure within Figure 9. Each part should have its own Figure number and the specification should be amended to reflect this change as well as explain the differences between the three parts. Figure 12 is not an exploded view and should not be bracketed. Figure 12

shows the spraying shield attached and not attached to the riser. Each part of Figure 12 should be given a Figure number and the specification should be amended to reflect this change. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 3 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim is directed to neither a "process" nor a "machine," but rather embraces or overlaps two different statutory classes of invention

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set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. Id. at 1551.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites the limitation "...said spray shield is apparatus that is attached to said riser..." in lines 15 to 16 of the claim. The preamble of the claim recites "...for shielding against spray from a sprinkler head of the type that is mounted atop a vertical riser and that when attached to said riser is..." in lines 1 and 2 of the claim. The preamble is contradictory to the recitation of the riser later in the claim. The preamble presents the claim such that the shielding apparatus is intended for use with a riser, but does not positively claim the riser. Lines 15 and 16 of the claim positively claim the combination of the shield with the riser. For purposes of this office action the claim has been construed to be the combination of the shield with a riser.

7. Claim 3 recites "The spray shield apparatus of claim 1, whereby the method of installing said spray shield apparatus onto said riser comprises:" in lines 1 and 2 of the claim. A single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph.

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8. Claim 5 recites the limitation "said orienting shelf" in line 7 of the claim. There is insufficient antecedent basis for this limitation in the claim. It appears that claim 5 should be dependant on claim 4, which first recites an orienting shelf.

9. Claim 6 recites the limitation " said orienting shelf " in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim. It appears that claim 6 should be dependant on claim 4, which first recites an orienting shelf.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,461,423 to Davis in view of U.S. Patent No. D312,296 to Smallwood.

Davis discloses a sprinkler shield having:

-a semicircular body (18) with a bottom end (20,22) configured to engage the a riser (12) via a friction fit thereby maintaining the spray shield substantially around the sprinkler head whereby the semi-cylindrical body will limit a spray from the sprinkler head to a predetermined area. The recitation of "...a semi-cylindrical body enclosed with a top end and an opposing bottom end,..." of lines 5 and 6 of the claim has been interpreted by the examiner as the top end must enclose the semi-cylindrical body and a bottom end must be present, but is not required to enclose the semi-cylindrical body.

-friction fit means (22) for attaching the spray shield apparatus to the riser without removing the sprinkler head, integrated within the bottom end and disposed to receive and engage the riser laterally with respect to the axis to the riser and to maintain the semi-cylindrical body in a predetermined position relative to a spray pattern from the sprinkler head.

-means for preventing the spray shield apparatus (24) that is attached to the riser from being forcibly tilted into a forwardly oblique position, causing the leading vertical edges of the body to contact a radius of the spray pattern from the sprinkler head thereby interfering with the spray pattern;

whereby the spray shield apparatus will effectively capture and contain a misdirected spray from the sprinkler head.

Davis does not disclose the semi-circular body having a top end enclosing the body. Smallwood shows a sprinkler shield having a semicircular body with a top end enclosing the body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shield apparatus of Davis with top end enclosing the semi-circular body of Smallwood in order to provide for more improved spray deflection.

Regarding claim 2, Davis further discloses the friction fit means (22) comprises:

-a snap-in attaching holed integrated with the bottomed end (see Figure 3), substantially circular in shape and of a predetermined diameter to accommodate and to partially encircle the riser;

-a gripping aperture (see Figure 3) located midway along a leading edge of the bottom end, adjacent to and communicating with the snap-in attaching hole, of the sufficient width to allow passage of the riser (12) into the snap-in attaching hole and of sufficient narrowness to enable the gripping aperture to maintain a frictional clamping engagement to the riser, whereby the spray shielded apparatus will easily attach to the riser and remain in a firmly affixed position relative to the sprinkler head.

Conclusion

12. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

13. Applicant should submit an argument under the heading "Remarks" pointing out disagreements with the examiner's contentions. Applicant must also discuss the

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references applied against the claims, explaining how the claims avoid the references or distinguish from them.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 1,840,721 to Ingram discloses a shield guard having a friction fit and a top enclosure. U.S. Patent No. 270,664 to Henderson discloses a friction fit spray shield having a top enclosure. U.S. Patent No. 6,575,380 to Corbett discloses a sprinkler spacer having a friction fit and means to prevent tilting. U.S. Patent No. 1,228,658 to Gaines discloses a nozzle shield having a friction fit. U.S. Patent No. 2,065,549 to Balensiefer discloses a spray shield having a friction fit. U.S. Patent No. 1,364,163 to Wampler discloses a spray shield.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney
Examiner
Art Unit 3752

sb


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7/9/05